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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/826,802 | 04/05/2001 | Joshua Lippiner | A33810-067879.0105 | 4070 |
| 21003 | 7590 | 08/31/2004 | EXAMINER | |
| BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112 | | | PHAM, THOMAS K | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2121 | |
| DATE MAILED: 08/31/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,802

Applicant(s)

LIPPINER ET AL.

Examiner

Thomas K Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

First Action on the Merits

1. Claims 1-46 of U.S. Application 09/826,802 filed on 04/05/2001 are presented for examination.

Quotations of U.S. Code Title 35

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim Objections

6. Claim 37 is objected to because of the following informalities: the term “look and feel of the web site” is not an appropriate language to be use for a web site since one of ordinary skill in the art can not feel a web site. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. Claims 1-2, 6-43 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,539,392 (“Rebane”).

Regarding claim 1

Rebane teaches conducting a survey of a visitor to a web page, comprising: providing a survey server to conduct the survey (col. 12 lines 51-54, “In local system 5 ... survey questionnaire 100”); storing the web page on a web server (col. 12 lines 39-41, “The merchant’s website ... from system 10”); sending the web page to a first computer being used by the visitor from said web server (col. 12 lines 36-39, “a consumer making ... following the transaction”); receiving a request at said survey server from the web page to conduct said survey (col. 12 lines 64-66, “The survey questionnaire ... after the transaction, or both”). Rebane does not specifically teach responding to said request by transmitting a pop-up window from said survey server to the visitor at the visitor's computer; presenting a survey document to the visitor through said pop-up window; and conducting said survey in said pop-up window. However, Rebane teaches the survey questionnaires are presented to a visitor’s computer using a Java Applet (col. 12 lines 41-45, “The merchant’s website ... through a web browser”) since applets are well known in the art of activating an independent application process on a different or pop-up window without interfering the main web page. Therefore, it would have been obvious to one of ordinary skill in

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the art to use Java Applet to create pop-up window for the purpose of presenting a survey questionnaires to the user because applets are well known in the art of activating an independent application process on a different or pop-up window without interfering the main web page.

Regarding claim 2

Rebane teaches pop-up window does not interfere with the web page by way of a Java Applet as stated in the above rejection to claim 1.

Regarding claim 6

Rebane teaches presenting the visitor with a set of profiling questions (fig. 1a).

Regarding claim 7

Rebane teaches set of profiling questions number more than four (fig. 1a).

Regarding claim 8

Rebane teaches set of profiling questions number less than eight (fig. 1a).

Regarding claim 9

Rebane teaches presenting the visitor with a set of critical attributes (fig. 1a).

Regarding claim 10

Rebane teaches the visitor ranks the importance of each of said set of critical attributes (fig. 1a).

Regarding claim 11

Rebane does not specifically teaches the visitor ranks the importance of each of said set of critical attributes on a scale of 1 to 9. However, Rebane teaches the visitor ranks the importance of each of said set of critical attributes on a scale of 1 to 10. Therefore, it would have been obvious to one of ordinary skill in the art that the scale of 1 to 10 is within a reasonable range

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that one skill in the art would have expected the same property (see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990)).

Regarding claim 12

Rebane teaches the visitor is presented with a subset of the total number of critical attributes being tested by the web site (col. 8 lines 56-60, “Consumer survey questionnaires ... other conventional means”).

Regarding claim 13

Rebane teaches the number of critical attributes being ranked is about four (col. 9 lines 30-53, “The survey questionnaire 100 ... enhance the shopping experience”).

Regarding claim 14

Rebane does not teaches the number of critical attributes being tested by the web site is about twenty. However, Rebane teaches the number of critical attributes being tested may be more or less based on a number of factors (col. 10 lines 40-48, “The survey questionnaires ... questionnaires 100 and 200”) for the purpose of evaluating any matter of interest needed from the consumers. Therefore, it would have been obvious to one of ordinary skill in the art to have the number of critical of attributes about twenty because it would provide about the reasonable amount of attributes for a survey for the purpose of evaluating any matter of interest needed from the consumers.

Regarding claim 15

Rebane teaches ranking the visitor's satisfaction with each of said set of critical attributes (col. 10 lines 31-38, “As with the initial ... eyes of their consumers”).

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Regarding claim 16

Rebane teaches the visitor's satisfaction is ranked on a scale of 1 to 9 similar to the above rejection to claim 11.

Regarding claim 17

Rebane teaches set of critical attributes allow said survey to adhere to a strict methodological practice (col. 10 lines 40-59, "The survey questionnaires ... data from online consumers").

Regarding claim 18

Rebane teaches strict methodological practice is designed to efficiently measure customer satisfaction in the online world (col. 10 lines 40-59, "The survey questionnaires ... data from online consumers").

Regarding claim 19

Rebane does not teach presenting the visitor with an appeasement screen. However, Rebane teaches presenting the visitor with a second survey screen based on the response of the previous survey (col. 9 line 66 to col. 10 line 48, "one or more post-purchase ... questionnaires 100 and 200") for the purpose of building loyalty through understanding buyer preferences.

Regarding claim 20

Rebane does not teach the appeasement screen contains a brief automatic response customized based on the critical attribute rankings. However, Rebane teaches presenting the visitor with a second survey screen based on the response of the previous survey (col. 9 line 66 to col. 10 line 48, "one or more post-purchase ... questionnaires 100 and 200") for the purpose of building loyalty through understanding buyer preferences.

Regarding claim 21

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Rebane does not teach presenting the appeasement screen only when the visitor is displeased.

However, Rebane teaches presenting the visitor with a second survey screen based on the response of the previous survey level of satisfactory (col. 9 line 66 to col. 10 line 48, “one or more post-purchase ... questionnaires 100 and 200”) for the purpose of building loyalty through understanding buyer preferences.

Regarding claim 22

Rebane teaches the visitor is designated as displeased if the rank given to any of the critical attributes is lower than a determining level (col. 4 lines 41-43, “alarm modules that ... cross specified thresholds”).

Regarding claim 23

Rebane teaches determining level is determined by the web site (col. 8 lines 35-39, “The data may be ... in an online transaction”).

Regarding claim 24

Rebane teaches the server controls the entire surveying process (col. 12 lines 33-50, “Turning to the specifics ... or presentation server 26”).

Regarding claim 25

Rebane teaches the server controls the entire data collection process (col. 12 lines 33-50, “Turning to the specifics ... or presentation server 26”).

Regarding claim 26

Rebane teaches the server is constantly enabled to receive for survey requests from the web site (col. 12 lines 64-66, “The survey questionnaire ... after the transaction, or both”).

Regarding claim 27

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Rebane teaches the request is generated by a trip-wire (col. 13 lines 7-12, “the invitation to fill ... consumer computer system 12”).

Regarding claim 28

Rebane teaches trip-wire is a line of code in the web site (col. 13 lines 7-12, “the invitation to fill ... consumer computer system 12”).

Regarding claim 29

Rebane teaches trip-wire can be placed anywhere within the web site (col. 13 lines 7-12, “the invitation to fill ... consumer computer system 12”).

Regarding claim 30

Rebane teaches the request identifies said trip-wire that originated the request (col. 13 lines 7-12, “the invitation to fill ... consumer computer system 12”).

Regarding claim 31

Rebane teaches transmitting said pop-up window to the visitor every n^{th} request from the web site (col. 12 lines 64-66, “The survey questionnaire ... after the transaction”).

Regarding claim 32

Rebane does not teach n is determined by the server. However, Rebane teaches the survey is presented to the consumer at some defined time (col. 12 lines 64-66, “The survey questionnaire ... after the transaction”). It would have been obvious to one of ordinary skill in the art that the defined time is determined by the server where the survey is originated from.

Regarding claim 33

Rebane teaches n is calculated on a daily basis similar to the rejection of claim 32 above.

Regarding claim 34

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Rebane teaches n is calculated by in order to attain a statistically relevant sample (col. 24 line 64-66, “An alarm filter ... the normative interval”)

Regarding claim 35

Rebane teaches n is calculated based at least in part on daily traffic to the web site and the number of surveys already collected about the web site (col. 25 lines 9-17, “a normative interval may ... from a particular merchant”).

Regarding claim 36

Rebane teaches pop-up window is fully branded (col. 12 lines 41-50, “In the case of ... or presentation server 26”).

Regarding claim 37

Rebane teaches the full branding gives said pop-up window the look of the web site (col. 12 lines 41-45, “In the case of online ... through a web browser”).

Regarding claim 38

Rebane teaches the request identifies the web site that originated the request (col. 12 lines 51-59, “data capture server 14 ... other transactions”).

Regarding claim 39

Rebane teaches offering the visitor an inducement for completing the survey (col. 9 lines 2-4, “The website could offer ... to complete surveys”).

Regarding claim 40

Rebane teaches the inducement is defined by the web site that requested the survey (col. 35 lines 7-12, “The intermediary website ... of a rebate program”).

Regarding claim 41

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Rebane teaches the inducement is offered by the web site that requested the survey (col. 35 lines 7-12, "The intermediary website ... of a rebate program").

Regarding claim 42

Rebane does not teach the inducement is offered by a third party. However, Rebane teaches the survey data might be gathered by a third-party (col. 8 lines 39-40, "The data may be ... previously collected data"). Therefore, it would have been obvious to one of ordinary skill in the art for the third party to offer the inducement in order to get more people to complete the survey.

Regarding claim 43

Rebane does not teach the inducement is financed by the web site that requested the survey. However, it would have been obvious to one of ordinary skill in the art for the web site that requested the survey to finance the inducement because it would be beneficial for the web site to collect valuable feedback from the consumers.

Regarding claim 45

Rebane does not teach the inducement is not awarded until the visitor has completed the entire survey. However, it would have been obvious to one of ordinary skill in the art to only award the users after they have completed the survey because it would be obvious to one of ordinary skill in the art that only a completed survey will have some kind of benefit to the web site otherwise data will be deleted.

Regarding claim 46

Rebane teaches the inducement is a reward (fig. 2a, first paragraph).

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8. Claims 3-5 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebane in view of U.S. Patent No. 5,893,098 ("Peters").

Regarding claim 3

Rebane does not teach the survey document contains an option to opt out of the survey. However, Peters teaches an option menu that allows user to terminate a survey (col. 20 lines 46-49, "An options menu is ... or 'terminated' ") for the purpose of provide the user with a freedom of choice if they were not interested in completing the survey. Therefore, it is obvious to one of ordinary skill in the art to incorporate the terminating option of Peters with the system of Rebane because it would provide the user with a freedom of choice if they were not interested in completing the survey.

Regarding claim 4

Rebane and Peters teach the pop-up window can be closed at any time ending the survey similar to the above rejection to claim 3.

Regarding claim 5

Rebane and Peters teach the data collected by said pop-up window that was prematurely closed is disregarded (see Peters col. 21 lines 1-3, "The local user ... deleted upon arrival").

Regarding claim 44

Rebane does not teach the inducement is fully voluntary. However, Peters teaches an option menu that allows user to activate, suspend or terminate a survey (col. 20 lines 46-49, "An options menu is ... or 'terminated' ") for the purpose of provide the user with a freedom of choice if they are or not interested in completing the survey. Therefore, it is obvious to one of ordinary skill in the art to incorporate the terminating option of Peters with the system of Rebane because it

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would provide the user with a freedom of choice if they are or not interested in completing the survey.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thomas Pham*; whose telephone number is (703) 305-7587 or the new number (571) 272-3689 beginning on October 2004, Monday - Friday from 8:00 AM - 5:00 PM EST or contact Supervisor *Mr. Anthony Knight* at (703) 308-3179 (or 571 272-3687 starting Oct. 2004).

Any response to this office action should be mailed to: **Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450**. Responses may also be faxed to the **official fax number (703) 872- 9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas Pham
Patent Examiner

TP

August 23, 2004


Anthony Knight
Supervisory Patent Examiner
Group 3600